The **Minnesota Attorney General's Office** has prepared this *Guide for Board Members* to help directors understand their responsibilities as stewards of their organizations. Under Minnesota law, directors of a Minnesota nonprofit corporation are responsible for the management of the business and affairs of the corporation. This does not mean that directors are required to manage the day to day activities of a corporation or to act in the role of an Executive Director. It does mean that directors must appoint officers and assign responsibilities to them so that the officers can effectively carry out the daily tasks of running the corporation. It also means that directors must supervise and direct the officers and govern the charity's efforts in carrying out its mission. In carrying out their responsibilities, the law imposes on directors the fiduciary duties of care, loyalty and obedience to the law. Minnesota courts have held that the law imposes the highest standard of integrity on the bearers of these duties.

Directors of Minnesota nonprofit corporations must discharge their duties in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

To Exercise the Proper Duty of Care:

1. Active Participation. A director must actively participate in the management of the organization including attending meetings of the board, evaluating reports, reading minutes, reviewing the performance and compensation of the Executive Director and so on. Persons who do not have the time to participate as required should not agree to be on the board.

2. Committees. Directors may establish committees having the authority of the board and may rely on information, opinions or reports of these committees. Committees operate subject to the direction and control of the board. As a result, directors are still responsible for the committees and should periodically scrutinize their work.

3. Board Actions. A director who is present at a meeting when an action is approved by the entire board is presumed to have agreed to the action unless the director objects to the meeting because it was not lawfully called or convened and doesn't participate in the meeting, or unless the director votes against the action or the director is prohibited from voting on the action because of a conflict of interest.

4. Minutes of Meetings. Written minutes should be taken at every board meeting. The minutes should accurately reflect board discussions as well as actions taken at meetings.

5. Books and Records. A director should have general knowledge of the books and records of the organization as well as its general operation. The organization's articles, bylaws, accounting records, voting agreements and minutes must be made available to members and directors who wish to inspect them for a proper purpose.

6. Accurate Record Keeping. A director should not only be familiar with the content of the books and records, but should also assure that the organization's records and accounts are accurate. This may mean the director must take steps to require regular audits by an independent certified public accountant. At the very least, the director should be aware of what the financial records disclose and take appropriate action to make sure there are proper internal controls.

7. Trust Property. A director has the duty to protect, preserve, invest and manage the corporation's property and to do so consistent with donor restrictions and legal requirements. Instituting proper internal controls will aid in the protection of assets.

8. Resources. A director must assist the organization in obtaining adequate resources to enable it to further its charitable mission.

9. Charitable Trusts. A trustee of a charitable trust has a higher standard of care than a director of a nonprofit corporation. A trustee has the duty to exercise the care an ordinary person would employ in dealing with that person's own property. A trustee with a greater level of skill must use that higher skill in carrying out the trustee's duties.

10. Investigations. A director has a duty to investigate warnings or reports of officer or employee theft or mismanagement. In some situations a director may have to report misconduct to the appropriate authorities, such as the police or the Attorney General. Where appropriate, a director should consult an attorney or other professional for assistance.

Traditionally, directors have an absolute duty of complete, undivided loyalty to the organization. This means that directors should avoid using their position or the organization's assets in a way which would result in pecuniary or monetary gain for them or for any member of their family. A director should put the good of the organization first and avoid engaging in transactions with the organization from which the director will benefit.

To Exercise the Duty of Loyalty:

1. Conflicts of Interest. Under certain circumstances, a contract or transaction between a nonprofit corporation and its director or an organization in which the director has a material financial interest is acceptable. However, if the transaction is challenged, the director will have the burden of establishing that the contract or transaction was fair and reasonable, that there was full disclosure of the conflict and that the contract or transaction was approved by members or other directors in good faith.

2. Written Policy. Boards should establish a written policy on avoiding conflicts of interest.

3. Loans. A nonprofit corporation may not lend money to a director or the director's family members unless the loan or guarantee may reasonably be expected, in the judgment of the entire board, to benefit the corporation.

4. Charitable Trust. In charitable trusts, transactions which otherwise might constitute a conflict of interest are permissible if the conflict was clearly contemplated and allowed by the original settlor of the trust.

5. Corporate Opportunity. Directors of business organizations are under a fiduciary obligation not to divert a corporate business opportunity for their personal gain. A director of a nonprofit corporation is also subject to this duty. This duty means that a director may not engage in or benefit from a business opportunity that is available to and suitable for the corporation unless the corporation decides not to engage in the business opportunity and conflicts of interest procedures are followed.

6. Internal Revenue Code. Other prohibitions relating to the duty of loyalty are specified in the rules of the Internal Revenue Code regarding self-dealing. These rules apply to private foundations.

Directors have a duty to follow the organization's governing documents (articles of incorporation and bylaws), to carry out the organization's mission and to assure that funds are used for lawful purposes. Also, directors must comply with state and federal laws that relate to the organization and the way in which it conducts its business.

To Exercise The Duty of Obedience:

1. State and Federal Statutes. Directors should be familiar with state and federal statutes and laws relating to nonprofit corporations, charitable solicitations, sales and use taxes, FICA and income tax withholding, and unemployment and workers' compensation obligations. They should also be familiar with the requirements of the Internal Revenue Service. Directors should see to it that their organization's status with state and federal agencies is protected.

2. Filing Requirements. Directors must comply with deadlines for tax and financial reporting, for registering with the Attorney General, for making social security payments, for income tax withholding, and so on. Additionally, if an organization is incorporated under the Minnesota Nonprofit Corporation Act, its directors have a duty to maintain its corporate status by submitting timely filings to the Secretary of State's Office.

3. Governing Documents. Directors should be familiar with their organization's governing documents and should follow the provisions of those documents. Directors should be sure proper notice is given for meetings, that regular meetings are held, that directors are properly appointed and that the organization's mission is being accomplished.

4. Outside Help. Where appropriate, directors should obtain opinions of legal counsel or accountants.